



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF APRIL 28, 2003

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#03-62 Elsner v. Uveges, S113799. (D037761; 106 Cal.App.4th 73; San Diego County Superior Court; 739513.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Are regulations promulgated under the California Occupational Safety and Health Act admissible to prove the standard of care and/or establish a presumption of negligence in a personal injury action by an employee against a party other than his or her own employee? (See Lab. Code, § 6304.5.)

#03-63 Mitsubishi Materials Corp. v. Superior Court, S114470. (G030056; 106 Cal.App.4th 39, mod. 106 Cal.App.4th 1070c; Orange County Superior Court; 814430, 814594.) Petition for review after the Court of Appeal granted a petition for writ of peremptory mandate.

#03-64 Taiheiyo Cement Corp. v. Superior Court, S113759. (B155736; 105 Cal.App.4th 398; Los Angeles County Superior Court; BC217805.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate.

Mitsubishi Materials Corp. and Taiheiyo Cement Corp. include the following issues: (1) Is Code of Civil Procedure section 354.6, which allows any Second World War “slave labor victim” or “forced labor victim,” or such person’s heir, to bring an

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action for compensation against any entity for whom that labor was performed if the action is commenced on or before December 31, 2010, unconstitutional under the foreign affairs doctrine as an impermissible state interference with the federal government's control over foreign affairs (Zschernig v. Miller (1968) 389 U.S. 429)? (2) Were any such claims by or on behalf of former American prisoners of war of Japan waived by the 1951 Treaty of Peace with Japan (3 U.S.T. 3169)?

#03-65 People v. Dale, S114527. (H024067; 106 Cal.App.4th 194; Santa Clara County Superior Court; CC113553.) Petition for review after the Court of Appeal dismissed an appeal from an order in a criminal case. The court ordered briefing deferred pending decision in People v. Samples, S112201 (#03-30), which includes the following issue: May the People appeal a finding that a prior conviction was not a serious felony within the meaning of the three strikes law? (See Pen. Code, § 1238, subds. (a) & (d).)

STATUS

#03-44 Mandel v. Household Bank (Nevada) National Association, S113699. The court ordered briefing deferred pending decision in Discover Bank v. Superior Court, S113725 (#03-43), which includes the following issue. Does the Federal Arbitration Act (9 U.S.C. § 1 et seq.) preempt a judicial finding that a provision in a mandatory arbitration agreement that provides that each party to the agreement waives any right to bring a class action against the other party is unconscionable under state law?

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